

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)
)
)
v.) Mag. No. 11-4M
)
EMERSON BEGOLLY)

NOTICE OF APPEAL AND EMERGENCY MOTION FOR STAY OF ORDER OF
RELEASE

AND NOW, comes the United States of America by its attorneys, David J. Hickton, United States Attorney for the Western District of Pennsylvania, and Soo C. Song, Assistant United States Attorney, and respectfully files a Notice of Appeal and requests that the District Court enter an order staying the release order entered by the Magistrate Judge Ervin S. Swearingen on January 6, 2011, pending the government's appeal.

1. The defendant has been charged with violating Title 18, United States Code, Sections 111(a)(1) and (b); and 924(c)(1)(A)(I), which punishes assaults and infliction of injury upon federal agents, and the knowing possession of a firearm in furtherance of a crime of violence.

2. Given the filing of the charge pursuant to 18 U.S.C. §924(c), a presumption exists that "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community." 18 U.S.C.

§3142(e)(3)(B). The defendant bears the burden to rebut that presumption, or he must be detained.

3. After taking testimony on Thursday, January 6, 2011, Judge Ervin S. Swearingen announced his decision to release the defendant on conditions. He did sustain a probable cause finding as to both charges.

4. The government informed the court and defense counsel that it intended to seek an appeal of Judge Swearingen's release order, and requested a stay of the release order.

5. Judge Swearingen granted the government's request for stay, and agreed to stay the case for 24 hours. (The detention hearing concluded some time after 5 PM).

6. Wherefore, the government requests that a District Court enter an emergency order staying the defendant's release until the appeal of the release order can be considered by the District Court.

Respectfully submitted,

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